IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6154 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JAI JALARAM BRICKS WORKS - Petitioner(s)
Versus
DISTRICT COLLECTOR-PANCHMAHALS & 2 - Respondent(s)

==========

Appearance :
MR YM THAKKAR for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MR HEMANG PARIKH, AGP for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 01/08/2007

ORAL JUDGMENT

The petitioner has approached this Court complaining about the inaction on the part of respondent no. 1 in not deciding its application for

renewal of the mining lease under the provisions of Gujarat Minor Mineral Rules, 1966 [hereinafter referred to as 'the Rules']. The petitioner is engaged in the business of manufacturing bricks. For the purpose of manufacturing the bricks the petitioner had been granted lease by the respondents to excavate the minor mineral, namely sand at river Meshree since 12/3/1993. The petitioner had been getting the lease renewed from time to time. The last lease was to expire on 15/4/2002. Hence the petitioner, in accordance with the aforesaid rules, preferred application dated 15/10/2001 for renewal of the lease. Respondent no. 1, however, rejected the application by order dated 13/10/2004 keeping in view the prohibition imposed upon the excavation of minor mineral from the river bed of Meshree on account of the scarcity of water. The said notification is dated 4/2/2002. Several applications for renewal were rejected by respondent no. 2. The petitioner is at serial no. 9 in the said order. Against the said order, the petitioner preferred appeal under the provisions of rule 38 (1)(a) of the Rules before the Additional Director [Appeals], Geology & Mines, Government of Gujarat being Appeal No. 406 of 2004. The said appeal was dismissed by him vide order dated 11/4/2005. Against the order in appeal, the petitioner preferred Revision Application under rule 38(1)(a) of the Rules to the Secretary, Industries & Mines Department, Government of Gujarat. The Deputy Secretary, namely respondent no. 3 by order dated 7/3/2006 allowed the Revision Application and remanded the matter for fresh decision of respondent no. 1 in accordance with law. In view of the said order, the matter has been

remanded and it is now pending before respondent no. 1. However, in the meanwhile, the petitioner preferred another application for renewal of lease on 7/11/2005. But it appears that the same has been rejected by respondent no. 1.

2. I have perused the record of this petition. I have also heard Mr. YM Thakkar, learned advocate for the petitioner and Mr. Hemang Parikh, Ld. AGP for respondents. It is the submission of Mr. Thakkar that respondent no. 1 has already decided the Revision Application in favour of the petitioner and has directed respondent no. 1 to grant the application of the petitioner in accordance with law, there is no reason for respondent no. 1 to not to take any decision on the application of the petitioner dated 15/10/2001. It is his submission that the second application dated 7/11/2005 had been given merely because prohibition that was imposed upon by notification dated 4/2/2002 was already lifted. He has also submitted that the filing of the second application would not come in the way of respondent no. 1 in deciding his first application that was filed within time. According to him, the second application was rejected on the ground of delay. Mr. Hemang Parikh, Ld. AGP has, however, submitted that respondent no. 1 has already taken a decision on the application submitted by petitioner on 7/11/2005, there is no need for him to decide the application which is dated 15/10/2001.

3. It is obvious that revisional authority i.e. Respondent no. 3 has taken decision dated 7/3/2006 on the application which was submitted on 15/10/2001. The said application was filed by the petitioner within the

stipulated time since the lease was to expire on 15/4/2002. It is also clear that respondent no. 1 has not taken any decision thereon. The said application was, at first instance, rejected by respondent no. 1 on the ground that there was notification imposing ban on grant of fresh lease or renewal of lease in view of the scarcity of water that was experienced during that time. However, that cause has not survived now. Respondent no. 1 is, therefore, required to take into consideration this development as also the fact that the application submitted by the petitioner for renewal of the lease dated 15/10/2001 was well within time. Decision has to be taken in accordance with the provisions of law, in as much as that respondent no. 3 has directed that the lease application will have to be granted in accordance with provisions of law and rules.

In view of the above, respondent no. 1 is directed to take appropriate decision in the matter as early as possible and in any case, not later than 30th September, 2007. As a result of the same, the relief prayed for in the petition is granted. Rule made absolute.

[Akshay H Mehta, J.]

* Pansala.